

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TILE TECH, INC., a California
Corporation,

Plaintiff,

v.

APPIAN WAY SALES, INC., a
Washington Corporation, and PUGET
LITE-PAVERS, INC., a Washington
Corporation,

Defendants.

-and-

APPIAN WAY SALES, INC., a
Washington Corporation, APPIAN WAY,
LLC, a Washington Limited Liability
Company, and PUGET LITE-PAVERS,
INC., a Washington Corporation,

Counterclaimants.

v.

TILE TECH, INC., a California
Corporation,

Counter-Defendant

Case No. 2:17-cv-01660-JLR

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Stipulated Protective Order is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"

MATERIAL

2.1 "Confidential" material means information, documents, and things the designating party believes in good faith constitutes confidential research, development, or commercial information that is maintained in confidence by the designating party and not generally known to others. Confidential material shall include the following documents and tangible things produced or otherwise exchanged:

- a) Information about the producing party's policies or practices;
- b) Information regarding the producing party's product development, design or specifications for past or present commercial products;
- c) Any information which the producing party is obligated by contract or state or federal law to keep confidential;
- d) Any financial documents not designated as Highly Confidential – Attorneys' Eyes Only.

2.2 "Highly Confidential – Attorneys' Eyes Only" material: The parties acknowledge that there may be information produced in discovery for which a higher level of protection is required; such information may be designated as "Highly Confidential – Attorneys' Eyes Only"

1 information. Highly Confidential – Attorneys’ Eyes Only designations should be used only for
2 sensitive technical, financial, competitive, or personnel information, which is not generally
3 known by third parties and that the Producing Party would not normally reveal to third parties or
4 would cause third parties to maintain in confidence either by agreements, policies, or procedures.
5 Highly Confidential – Attorneys’ Eyes Only information shall include the following documents
6 and tangible things produced or otherwise exchanged:

- 7 a) Design files, design drawings, design specifications;
- 8 b) Manufacturing techniques, laboratory notebooks, prototypes, and
9 information related thereto;
- 10 c) The financial books and records of the producing party and financial
11 information pertaining to the financial books and records;
- 12 d) Information about the revenues, costs, expenses, profits and losses of the
13 producing party;
- 14 e) Pricing information;
- 15 f) Accounting information that is not made publicly available;
- 16 g) Information about the volume and types of sales, sales leads or sales
17 incentives or sales goals;
- 18 h) Business and marketing plans or analyses, surveys, customer
19 communications;
- 20 i) Short and long-term business plans;
- 21 j) Marketing strategies and plans;
- 22 k) Information regarding the producing party’s customers and competitors;
- 23 l) Contracts that the producing party has with customers, drafts thereof, and
24 communications concerning such drafts and contracts;
- 25 m) Licensing agreements;
- 26

1 n) Contracts that the producing party has with suppliers, vendors, contractors,
2 or subcontractors, drafts thereof, and communications concerning such
3 drafts and contracts.

4 3. SCOPE

5 The protections conferred by this Stipulated Protective Order cover not only Confidential
6 material and Highly Confidential – Attorneys’ Eyes Only material (collectively, “Protected
7 Information”) (as defined above), but also (1) any information copied or extracted from
8 Protected Information; (2) all copies, excerpts, summaries, or compilations of Protected
9 Information; and (3) any testimony, conversations, or presentations by parties or their counsel
10 that might reveal Protected Information.

11 However, the protections conferred by this Stipulated Protective Order do not cover:
12 (i) information that is in the public domain or becomes part of the public domain through trial or
13 otherwise; (ii) information which, after its disclosure to a receiving party, is published to the
14 general public by a party having the right to publish such information; or (iii) information that
15 the receiving party can show by written record was independently developed by it after the time
16 of disclosure by personnel who did not have access to the producing party’s Protected
17 Information.

18 4. ACCESS TO AND USE OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY MATERIAL

20 4.1 Basic Principles. A receiving party may use Protected Information that is
21 disclosed or produced by another party or by a non-party in connection with this case only for
22 prosecuting, defending, or attempting to settle this litigation. A receiving party’s outside counsel
23 may use Highly Confidential – Attorneys’ Eyes Only information that is disclosed or produced
24 by another party or by a non-party in connection with this case only for prosecuting, defending,
25 or attempting to settle this litigation. Protected Information may be disclosed only to the
26 categories of persons and under the conditions described in this Stipulated Protective Order.

1 Protected Information must be stored and maintained by a receiving party at a location and in a
2 secure manner that ensures that access is limited to the persons authorized under this Stipulated
3 Protective Order. Pages of transcribed deposition testimony or exhibits to depositions that reveal
4 Highly Confidential – Attorneys’ Eyes Only information must be separately bound by the Court
5 Reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
6 Order.

7 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the designating party, a receiving party may
9 disclose any Confidential material only to:

10 (a) the receiving party’s counsel of record in this action, as well as employees
11 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation;

14 (c) experts and consultants to whom disclosure is reasonably necessary for
15 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
16 A);

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the duplication of
19 confidential material, provided that counsel for the party retaining the copy or imaging service
20 instructs the service not to disclose any confidential material to third parties and to immediately
21 return all originals and copies of any confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
26

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this Stipulated Protective Order;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 (h) mock jurors who have signed an undertaking or agreement agreeing not to
6 publicly disclose Confidential Material and to keep any information regarding Confidential
7 Material confidential;

8 (i) any mediator who is assigned to hear this matter, and his or her staff,
9 subject to their agreement to maintain Confidential Material confidential to the same degree as
10 required by this Protective Order; and

11 (j) any other person with the prior written consent of the producing party.

12 4.3 Additional Protections for "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY" Material. No party receiving any document or thing designated "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall disclose any such information to any
15 other person or entity, except to the following:

16 (a) the receiving party's counsel of record in this action, as well as employees
17 of counsel to whom it is reasonably necessary to disclose the information for this litigation, such
18 counsel being responsible for each employee's compliance with this Stipulated Protective Order;

19 (b) outside experts and outside consultants to whom disclosure is reasonably
20 necessary for this litigation and who have signed the "Acknowledgement and Agreement to Be
21 Bound" (Exhibit A) and provided further that the procedures set forth in Paragraph 5 below have
22 been followed;

23 (c) the Court, Court personnel, and Court reports and their staff;

24 (d) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26

1 instructs the service not to disclose any Attorneys' Eyes Only information to third parties and to
2 immediately return all originals and copies of any Attorneys' Eyes Only information;

3 (e) the author or recipient of a document containing the Attorneys' Eyes Only
4 information or a custodian or other person who otherwise possessed or knew the Attorneys' Eyes
5 Only information;

6 (f) mock jurors who have signed an undertaking or agreement agreeing not to
7 publicly disclose Attorneys' Eyes Only information and to keep any information regarding
8 Attorneys Eyes Only information confidential;

9 (g) any mediator who is assigned to hear this matter, and his or her staff,
10 subject to their agreement to maintain confidentiality to the same degree as required by this
11 Stipulated Protective Order; and

12 (h) any other person with the prior written consent of the producing party.

13 4.4 Filing Protected Information. Before filing Protected Information or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party
15 to determine whether the designating party will remove the designation applied to the Protected
16 Information, whether the document can be redacted, or whether a motion to seal or stipulation
17 and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
18 followed and the standards that will be applied when a party seeks permission from the court to
19 file material under seal.

20 5. PROCEDURE FOR DISCLOSURE OF HIGHLY CONFIDENTIAL – ATTORNEYS'
21 EYES ONLY INFORMATION:

22 (a) Unless otherwise ordered by the Court or agreed to in writing by the parties,
23 outside counsel for a party that seeks to disclose to an expert and/or consultant any information
24 or item that has been designated by a party as Attorneys' Eyes Only pursuant to this Stipulated
25 Protective Order first must make a written request to the producing party that (i) identifies the
26 general categories of Attorneys' Eyes Only information that the party seeks permission to

1 disclose to the expert and/or consultant; (ii) sets forth the full name of the expert and/or
2 consultant and the city and state of his or her primary residence, (iii) attaches a copy of the
3 expert and/or consultant's current resume, (iv) identifies the expert and/or consultant's current
4 employer(s), and (v) provides a list of the cases in which the expert and/or consultant has
5 testified at deposition or trial within the last five (5) years.

6 (b) A party that makes a request and provides the information specified in the
7 preceding paragraph may disclose the subject Attorneys' Eyes Only information to the identified
8 expert and/or consultant unless, within ten (10) days of delivering the request, the party receives
9 a written objection from the producing party. Any such objection must set forth in detail the
10 grounds on which it is based.

11 (c) A party to the underlying action that receives a timely written objection must
12 meet and confer with the producing party (through direct voice to voice dialogue) to try to
13 resolve the matter by agreement within seven (7) days of the written objection.

14 (d) If no agreement is reached, the party seeking to disclose the Attorneys' Eyes Only
15 information to the expert and/or consultant shall file a motion with the Court within seven (7)
16 days stating the reason why the expert and/or consultant should be entitled to review such
17 information. If the requesting party does not timely file its motion, it shall be precluded from
18 disclosing the subject Attorneys' Eyes Only information to the identified expert and/or
19 consultant. Any such motion must describe the circumstances with specificity, set forth in detail
20 the reasons why the disclosure to the expert and/or consultant would not cause unreasonable risk
21 of harm, irreparable harm, or prejudice to the opposing party. In any such proceeding, the
22 producing party shall bear the burden of proving that the risk of harm that the disclosure would
23 entail (under the safeguards proposed) outweighs the party's need to disclose the Attorneys'
24 Eyes Only information to its expert and/or consultant.

1 6. DESIGNATING PROTECTED INFORMATION

2 6.1 Exercise of Restraint and Care in Designating Protected Information. Each party
3 or non-party that designates information or items for protection under this Stipulated Protective
4 Order must take care to limit any such designation to specific material that qualifies under the
5 appropriate standards. The designating party must designate for protection only those parts of
6 material, documents, items, or oral or written communications that qualify, so that other portions
7 of the material, documents, items, or communications for which protection is not warranted are
8 not swept unjustifiably within the ambit of this Stipulated Protective Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated
14 for protection do not qualify for protection, the designating party must promptly notify all other
15 parties that it is withdrawing the mistaken designation.

16 6.2 Manner and Timing of Designations. Except as otherwise provided in this
17 Stipulated Protective Order (see, *e.g.*, second paragraph of section 6.2(a) below), or as otherwise
18 stipulated or ordered, disclosure or discovery material that qualifies for protection under this
19 Stipulated Protective Order must be clearly so designated before or when the material is
20 disclosed or produced, unless such production results from an inspection permitted under Fed. R.
21 Civ. P. 34, in which case the producing party shall have a reasonable time after such inspection
22 and a related request for copies of inspected documents and things of no less than seven (7) days
23 to make its designations.

24 (a) Information in documentary form: (*e.g.*, paper or electronic documents
25 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), the designating party must affix the word "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains such information. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins); provided, however, that a party may designate documents produced in this matter as Confidential or Attorneys’ Eyes Only on a family level (e.g., an email and its attachment(s)) in order to reduce cost and burden during the review and production process. The parties acknowledge that the designation by a producing party of a document as Confidential or Attorneys’ Eyes Only does not impose any obligation upon the Court, if the document is filed in this case or if it or any portion of it is quoted in any document filed with the Court, to permit the sealing of said document(s), which sealing is governed by Local Rule 5 or other order of this Court.

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. With respect to deposition testimony, such testimony will be treated as Attorneys’ Eyes Only information, regardless of whether it is designated as such during the deposition, up to and until thirty (30) days after the party or non-party receives the transcript of the deposition. Any party or non-party may, within fifteen (15) days after receiving the transcript of a deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Protected Information pursuant to this Stipulated Protective Order. If a party or non-party desires to protect Protected Information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only

1 a portion or portions of the information or item warrant protection, the producing party, to the
2 extent practicable, shall identify the protected portion(s).

3 (d) Native Files: If files are produced in native form or in any other form in
4 which it is impractical to designate each page as "CONFIDENTIAL" or "HIGHLY
5 CONFIDENTIAL – ATTORNEY'S EYES ONLY" due to the nature of the file, then by adding
6 such designation to the filename, or at a minimum, such abbreviations as "CONF" for
7 CONFIDENTIAL files, or "HC-AEO" for files that are HIGHLY CONFIDENTIAL –
8 ATTORNEYS' EYES ONLY, the producing party has effectively designated the file, and each
9 page therein, as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
10 ONLY, respectively.

11 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the designating party's
13 right to secure protection under this Stipulated Protective Order for such material. Upon timely
14 correction of a designation, the receiving party must make reasonable efforts to ensure that the
15 material is treated in accordance with the provisions of this Stipulated Protective Order.

16 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
18 Protected Information at any time. Unless a prompt challenge to a designating party's
19 designation of Protected Information is necessary to avoid foreseeable, substantial unfairness,
20 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does
21 not waive its right to challenge a Protected Information designation by electing not to mount a
22 challenge promptly after the original designation is disclosed.

23 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
24 regarding Protected Information designations without court involvement. Any motion regarding
25 Protected Information designations or for a protective order must include a certification, in the
26 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and

1 confer conference with other affected parties in an effort to resolve the dispute without court
2 action. The certification must list the date, manner, and participants to the conference. A good
3 faith effort to confer requires a face-to-face meeting or a telephone conference.

4 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court
5 intervention, the designating party may file and serve a motion to retain the protections afforded
6 by this Stipulated Protective Order under Local Civil Rule 7 (and in compliance with Local Civil
7 Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the
8 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
9 or impose unnecessary expenses and burdens on other parties) may expose the challenging party
10 to sanctions. All parties shall continue to maintain the material in question as its original
11 designation requires under this Stipulated Protective Order until the court rules on the challenge.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
16 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this Stipulated Protective Order. Such notification shall include a copy of this
22 Stipulated Protective Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued
24 by the designating party whose Protected Information may be affected.

1 9. UNAUTHORIZED DISCLOSURE OF PROTECTED INFORMATION

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Information to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the receiving party must immediately (a) notify in writing the designating party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 Protected Information, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this Stipulated Protective Order, and (d) request that such person or
8 persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
9 Exhibit A.

10 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
11 INFORMATION

12 When a producing party gives notice to receiving parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of the
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
15 provision is not intended to modify whatever procedure may be established in an e-discovery
16 order or agreement that provides for production without prior privilege review. The parties agree
17 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

18 11. TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals, each receiving
20 party must return all Protected Information to the producing party, including all copies, extracts
21 and summaries thereof.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain Protected Information.
26

The confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: March __, 2018

Respectfully submitted,

/s/

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/s/

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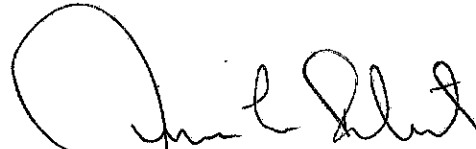
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Way, LLC, and Puget Lite-Pavers, Inc.*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7
8 DATED: 21 March 2018



Hon. James L. Robart
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Tile Tech Inc. v. Appian Way Sales Inc., et al.*, 2:17-cv-01660-JLR (W.D. Wash.). I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____